

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH
CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition No.14496 of 2019

Date: 29.08.2019

Between:

Smt. Vankayala Jyothi

..Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary,
GAD, Spl (Law & Order) Dept.,
Secretariat, Hyderabad,
and others.

..Respondents

Counsel for the Petitioner : Sri P.Prabhakar Rao

Counsel for the respondents : Sri S.Sharath,
Special Government Pleader

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present writ petition has been filed by Smt.Vankayala Jyothi, the wife of the detenu, questioning the proceedings vide C.No.69/PDC/KNR/2019, dated 30.04.2019, passed by the 2nd respondent, and confirmed by the 1st respondent vide G.O.Rt.No.1485, General Administration (Spl.(Law & Order) Department, dated 01.06.2019, as illegal, arbitrary, and violative of Articles 14, 21 and 22 of the Constitution of India, and to quash the same.

2. The case of the petitioner is that the respondent No.2 has passed the detention order against her husband, Vankayala Shekar vide proceedings C.No.69/PDC/KNR/2019, dated 30.04.2019, exercising the powers conferred under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (in short, hereinafter referred to as 'the Act'), and confirmed by the 1st respondent vide G.O.Rt.No.1485, General Administration (Spl.(Law & Order) Department, dated 01.06.2019. It is the case of the petitioner that her husband was falsely implicated in a criminal case registered by the 3rd respondent, in F.I.R.No.532 of 2018, on 31.12.2018, under Sections 354-C of IPC and 67 of the Information Technology Act, 2000 by showing the detenu as accused No.2. It is the further case of the petitioner that the *de facto* complainant, Neredupalli Harika, D/o.Ravi Kumar, aged 20 years, has

stated in her complaint that she got engaged to one Praneeth Kumar on 14.12.2018 and after her engagement, her fiancée was receiving vulgar messages, her personal photos and videos from mobile Nos.+1(505)365 & 6247, +1(505) 300 & 0113 and +1(405)500 & 0248 and that she suspected Mr.Thirunagari Vashishta, who has arrayed as A.1 and the detenu-Vankayala Shekar as A.2. Thereafter, the *de facto* complainant has given another complaint, on 03.02.2019, stating that in the month of November, 2014, the detenu came to her house and made a false promise and forcibly committed rape on her. At that time, she was aged only 16 years. Further, he threatened to kill her mother, and her brother if she revealed this incident to anyone. Hence, due to fear, she did not inform anybody about his acts. Basing on these allegations, the 3rd respondent herein has added Section 376(1)(2)(i) of IPC and Section 6 of POCSO Act against the detenu by deleting the name of A.1, who was the close relative of the *de facto* complainant. It is the further case of the petitioner that the 3rd respondent has arrested the detenu on 05.02.2019 and remanded her husband to judicial custody, and ever since then the detenu is in judicial custody. The 3rd respondent has neither completed the investigation, nor filed the charge-sheet. Moreover, the two bail applications, vide CrI.M.P.Nos.79 of 2019, and 747 of 2019, moved by the detenu, before the Additional Sessions Judge (Special Judge for Trial of POCSO Act) at Karimnagar, have been opposed by the prosecution. Thus, they were dismissed on 21.02.2019, and 09.04.2019 respectively.

3. Heard Sri P.Prabhakar Rao, the learned Counsel for the petitioner, and Sri S.Sharath, the learned Special Government Pleader for the respondents.

4. The Counsel for the petitioner has raised the following contentions:-

Firstly, the detention order is not legally sustainable as the same is passed basing on only one recently registered crime; secondly, the case which is registered, even if taken on its face value, relates to forcible sexual intercourse; thirdly, these types of cases can be easily dealt with by the ordinary Criminal Justice System by holding a criminal trial. Thus, such a case falls within the ambit of “*law and order* problem”, and do not fall under the Act. Therefore, the impugned orders are liable to be set aside. Fourthly, the detaining authority is not justified in invoking a draconian power under the preventive detention laws; the detaining authority has to be extremely careful while passing the detention order. For, the detention order *ipso facto* adversely affects the fundamental right of personal liberty enshrined in Article 21 of the Constitution of India. Lastly, while passing the detention order, dated 30.04.2019, the 2nd respondent has not applied his mind to the facts and circumstances of the cases. The respondent No.1, without application of mind, has passed the confirmation order, dated 01.06.2019 in a mechanical manner. For, admittedly, the two bail applications moved by the detenu in Crime No.538 of 2018 were dismissed by the I-Additional Sessions Judge, Karimnagar. Therefore, the detenu continued to be in judicial custody. Despite the fact that the detenu is in custody, the preventive detention order has been passed against the detenu. Hence, even the confirmation order deserves to be set aside.

5. Mr. S.Sharath Kumar, the learned Special Government Pleader has vehemently argued that the nature of offence allegedly committed by the detenu is sufficient to cause a feeling of insecurity in the minds of

the people at large. Since the modus of committing the crime was forcible sexual intercourse with a minor girl, it had created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned orders. Hence, the learned Government Pleader has supported the impugned orders.

6. In view of the submissions made by both the sides, the only question that rises for determination in this writ petition is:

“Whether the detention order, dated 30.04.2019 passed by the 2nd respondent, and the confirmation order, dated 01.06.2019, passed by the 1st respondent, are liable to be set aside or not?”

7. In catena of cases the Hon’ble Supreme Court as well as this Court have held that there is a vast difference between “law and order” and “public order”. The offences which are committed against a particular individual fall within the ambit of “law and order”. It is only when the public at large is adversely affected by the criminal activities of a person, the conduct of a person is said to “disturb the public order”. Moreover, individual cases can be dealt with by the regular criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. For the invoking of such law adversely effects the fundamental right of personal liberty which is guaranteed and protected by Article 21 of the Constitution of India. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8. In the case of **Ram Manohar Lohia v. State of Bihar**¹, the Hon’ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon’ble Supreme Court has observed as under:

¹ AIR 1966 SC 740

“54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression 'public order' take in every kind of disorders or only some of them? The answer to this serves to distinguish 'public order' from 'law and order' because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.”

9. In the case of **Kanu Biswas v. State of West Bengal**², the Supreme Court has opined as under:

² (1972) 3 SCC 831

“The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call ‘ordre publique’ and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?”

10. A bare perusal of the detention order clearly reveals that the order passed by the authority cannot be sustained on the simple ground that a single criminal case has been registered in the year 2018, against the detenu. And by the time, the order was passed on 30.04.2019, by the 2nd respondent, application for bail was rejected by the I-Additional Sessions Judge, Karimnagar, on 21.02.2019, on the first occasion, and later on 09.04.2019 on the second occasion. Thus, the detenu continued to be in judicial custody. Moreover, the authority who has passed the order has lost sight of the fact that a single crime committed by an individual, however heinous it may be, cannot be a ground for passing the impugned order.

11. Further, another ground on which the order of detention is passed on the apprehension that the detenu may move a bail application, and there is every likelihood of his release on bail in due course of time and that he may indulge in similar offences while on bail. Such an apprehension cannot be sustained for the simple reason that the fundamental right guaranteed under Article 21 of the Constitution of India cannot be scuttled. More particularly, when the criminal justice

system has been set in motion that a person who is accused of an offence and is in judicial custody is entitled to move bail application before the concerned Court and it is for that Court to pass order on the bail application taking into consideration the facts and circumstances of that particular case. Merely on the apprehension that the criminal court may release the person on bail cannot be a ground for passing the impugned order and in the event of his release on bail, there is imminent possibility of indulging in similar prejudicial activities, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. In such an event, it is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of an accused and to handover the history-sheet of the accused. The police should be more vigilant in collecting the whole data against the detenu and to furnish the same to the Public Prosecutor/Additional Public Prosecutor to see that the bail application of the detenu is dismissed. When the detenu has not even been released from the judicial custody, the apprehension of his coming out from the prison, and committing similar offences, is misplaced. It is appropriate to refer to the decision of the Apex Court in **Rekha Vs. State of Tamil Nadu**³, wherein it is held as follows:

“Where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail who is already in custody, provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence, the detention order will be illegal.”

³ (2011) 5 SCC 244

12. Even while passing the confirmation order dated 01.06.2019, the Special Chief Secretary to Government (POLL), General Administration (Spl (Law and Order) Department, Government of Telangana, the respondent No.1, has failed to notice that the detenu continues to languish as an under-trial in the jail. Once the detenu is already confined, the question of confirming the detention order would not even arise.

13. For the reasons stated above, the Writ Petition is hereby allowed. The impugned detention order dated 30.04.2019 passed by the respondent No.2, and the confirmation order dated 01.06.2019 passed by the respondent No.1 are hereby set aside. The respondents are directed to set the detenu, namely, Mr. Vankayala Shekar, S/o.Shankar, at liberty forthwith, if he is no longer detained in the judicial custody in the criminal case, which have been registered so far against him.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

ABHISHEK REDDY, J

29th August, 2019
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